IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 19TH JANUARY 2007 / 29TH PAUSHA 1928

WP(C).No. 3340 of 2004(V)

PETITIONERS:

1. M.J.THOMAS, S/O. JOHN,
   AGED 86 YEARS, TANGE ESTATE, MANANTHODDY, NORTH WYNAD.

2. SOBHA JOHN KOSHY, D/O. M.J.KOSHY,
   AGED 42 YEARS, MUTHESA ESTATE, KARTHIKULAM P.O.,
   MANANTHODDY, NORTH WYNAD (DIED).

3. ZACHARIA JOHN, S/O. JOHN,
   AGED 82 YEARS, JAY ESTATE, KARTHIKULAM P.O., MANANTHODDY.

4. MRS.LENY SUSAN MATHEW, D/O.MATHEW JOHN, AGED 50 YEARS,
   KILLIMANJARO ESTATE, AYROOAR VILLA, MANANTHODDY P.O.

5. M.J.GEORGE, S/O. JOHN,
   AGED 79 YEARS, P.M.G.ESTATE, KARTHIKULAM P.O., MANANTHODDY.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

RESPONDENTS:

1. THE CONSERVATOR & CUSTODIAN OF FOREST, OLAVAKODE, PALAKKAD.

2. THE DIVISIONAL FOREST OFFICER,
   OFFICE OF THE DIVISIONAL FOREST OFFICE,
   NORTH WYNAD DIVISION, MANANTHAVADY.

3. CHIEF CONSERVATOR OF FOREST, TRIVANDRUM.

4. DISTRICT COLLECTOR, WYNAD, CIVIL STATION, KALPETTA.

5. THE TAHSILDAR, MANANTHAVADI, WYNAD DISTRICT.

BY APL. GOVERNMENT PLEADER SMT. SUSHEELA R. BHAT (FORESTS)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/01/2007 THE COURT, ON THE SAME DAY, DELIVERED THE FOLLOWING:

PETITIONERS' EXHIBITS:

EXT.P1 TRUE COPY OF JUDGMENT IN M.F.A.NO.934/1990 DT. 10-2-1998.

EXT.P2 LETTER DT.20-9-2000.

EXT.P3 ROUGH SKETCH OF THE AREA RESTORED.

EXT.P4 COMMUNICATION DT. 21-9-2000.

EXT.P5 COMMUNICATION DT. 21-9-2000.

EXT.P6 OBJECTION DT.31-8-2001.

EXT.P7 IMPUGNED ORDER DT. 3-1-2003.

EXT.P7(a) LETTER DT. 27-8-2005.

EXT.P8 OBJECTION FILED BY THE PETITIONERS DT.18-2-2003.

EXT.P9 ACKNOWLEDGMENT CARD .

EXT.P10 LETTER DATED 2-3-2005.

RESPONDENTS' EXHIBITS:

EXT.R2(a) GOVT. ORDER DT. 30-8-2000.

EXT.R2(b) LETTER DT. 12-6-2001.

EXT.R2(c) LETTER DT.28-6-2001.

EXT.R2(d) TRUE COPY OF ACKNOWLEDGMENT DUE.

EXT.R2(e) LETTER DT.17-11-2004.

EXT.R2(f) LETTER DT. 26-11-2004.

EXT.R2(g) ORDER DT.22-1-2001 IN C.M.P. 53592/2OOO IN O.P. 30181/2000.

EXT.R2(h) TRUE COPY OF LETTER.

EXT.R2(i) MAHAZAR DT. 6-8-2001.

EXT.R2(j) LETTER DT. 31-8-2001.

EXT.R2(k) LETTER DT. 16-11-2004.

EXT.R2(l) LETTER DT.20-12-2004.

EXT.R2(m) ORDER DT.31-10-2005 IN O.P. 30181/2000.

EXT.R2(n) JUDGMENT DT. 3-10-2005 IN W.A. NO.562/2000.

EXT.R2(o) PROPOSAL LETTER DT. 19-8-2000.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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W.P(C). No. 3340 of 2004

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Dated this, the 19th January, 2007.

J U D G M E N T

Certain lands belonging to the petitioners were taken over from them by the Forest Department as vested forest under the Private Forests (Vesting and Assignment) Act. The petitioners filed Original Applications (OAs) before the Forest Tribunal, Koahikode against the taking over of the land as vested forest under the said Act. Being unsuccessful, they approached this Court by filing M.F.A. No. 934/1990. That M.F.A was in respect of OA Nos. 45, 46, 47, 48 and 50 of 1990 and 66, 67, 68, 69 and 71 of 1975. A Division Bench of this Court, by Ext. P1 judgment, allowed the MFA and set aside the judgment of the Forest Tribunal in the OAs. Consequently, the petitioners became entitled to restoration of the lands covered by the OAs. The lands covered by the OAs other than O.A. Nos. 67 and 68 have been restored to the petitioners. However, the land covered by OA Nos. 67 and 68 were not restored to the petitioners since in the meanwhile, the same were encroached into by some tribals and it became impossible to evict them from those lands. Therefore, originally, the Divisional Forest Officer proposed that an equivalent area of land be given to the petitioners in lieu of the land ordered to be restored by the Forest Tribunal by Ext. P5. However, that also was not possible probably because, for giving forest land, permission of the Central Government would have been necessary. In the above circumstances , by Ext. P7(a), the Divisional Forest Officer informed the Conservator of Forest that the owners suggested that they are prepared to accept compensation for the land.

2. The petitioners submit that pursuant thereto, the land in question was valued by the Tahsildar, Mananthavady and he has recommended the value of the land involved in O.A. No. 67 as Rs. 1000/- per cent and the land involved in O.A. No. 68 as Rs. 800/- per

cent. The present prayer of the petitioners is either to restore the original land or to pay the compensation as assessed by the Tahsildar as per Ext. P10 produced by the petitioners along with the reply affidavit filed by the petitioners.

3. The 2nd respondent has filed a counter affidavit practically admitting all the averments of the petitioners. But, strangely they have taken a contention that this land is ecologically fragile land and there is a proposal to notify the land as ecologically fragile lands. However, in the counter affidavit, there is no case that any notification pursuant thereto under the relevant Act has been issued, which has been filed as early as on 1-6-2004. But, they have filed an additional counter affidavit wherein they rely on a Division Bench decision of this Court namely Ext. R2(m) on the point. Learned Special Government Pleader (Forests) would also contend that by virtue of Exts. R2(h) and R2(l) letters written by the petitioner, it must be presumed that the petitioners have given up their claim for the land and compensation in lieu thereof.

4. I have considered the rival contentions in detail.

5. It is not disputed by the respondents that Ext. P1 has become final and therefore they are liable to restore the land to the petitioners. Therefore, the only contention in the counter affidavit appears to be on the basis of the new Act in respect of ecologically fragile lands. Even in respect of that, for the last more than two years, the same remains as a proposal and has not yet matured into a notification as required under the said Act. Further, I do not find any merit in the contention, since even according to the respondents themselves, the land in question is in the possession of some tribals under the leadership of Smt. C.K. Janu and it is impossible to evict them from that land. Therefore, I find no merit in the contention in

the counter affidavit that the land in question is ecologically fragile land coming within the purview of the Kerala Forest (Vesting and Management of Ecologically Fragile Lands) Act.

6. Now, the question is as to what should be the relief to be granted to the petitioners, since I have found that the petitioners are entitled to get the land restored in accordance with Ext. P1 and admittedly the respondents are not in a position to restore the same to the petitioners on account of encroachment by tribals whom the respondents are not in a position or do not want to evict. The respondents also do not dispute that by Ext. P5, the Divisional Forest Officer once suggested giving an equivalent area from the private forest area adjoining to their land, which was taken over as vested forest from them in lieu of their land. But, admittedly, legal hurdles are there for that course of action. From Ext. P7(a), the Divisional Forest Officer has informed the Conservator of Forest that the petitioners are prepared to accept compensation for the land. It appears that the respondents also contemplated action in that direction as is evidenced by Ext. P10 communication from the Tahsildar, Mananthavady to the District Collector, Wyanad, wherein the Tahsildar has assessed the value of the land which has to be restored to the petitioners as Rs. 1000/- per cent in respect of the land covered by O.A.No. 67/75 and Rs. 800/- per cent in respect of the land covered by O.A.No. 68/75. In view of these developments, I am of opinion that in so far as the respondents are not able to restore the land in compliance with the judgment of this Court, the petitioners are certainly entitled to compensation for the land, which is to be restored to them. Now that the Tahsildar has assessed the value of the land which, according to him, is very reasonable compared to the market value of the land in the area, I am of opinion that the

petitioners should be paid compensation for their land at the rate assessed by the Tahsildar as per Ext. P10.

Accordingly, there would be a direction to the respondents to pay to the petitioners compensation for the land directed to be restored to them as per Ext. P1 judgment of this Court in respect of the lands covered by O.A.Nos. 67 and 68 of 1975 at the rates assessed by the Tahsildar as per Ext. P10. Amounts calculated as above shall be disbursed to the respective petitioners within a period four months from the date of receipt of a copy of this judgment. The writ petition is allowed as above.

Sd/- S. Siri Jagan, Judge.

Tds/